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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 MIGUEL GARZA,

12 Petitioner,

2:04-cv-0625-GEB-JFM-P

13 vs.

14 SCOTT KERNAN, Warden, et al.,

15 Respondent.

ORDER

16 _____/
17 Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of
18 this court's September 28, 2009 denial of his application for a writ of habeas corpus. Before
19 petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c);
20 Fed. R. App. P. 22(b).

21 A certificate of appealability may issue under 28 U.S.C. § 2253 “only if the
22 applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C.
23 § 2253(c)(2). The certificate of appealability must “indicate which specific issue or issues
24 satisfy” the requirement. 28 U.S.C. § 2253(c)(3).

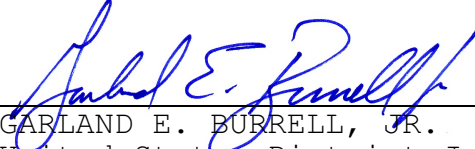
25 A certificate of appealability should be granted for any issue that petitioner can
26 demonstrate is “‘debatable among jurists of reason,’” could be resolved differently by a different

1 court, or is “adequate to deserve encouragement to proceed further.” Jennings v. Woodford,
2 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).¹

3 Petitioner has made a substantial showing of the denial of a constitutional right in
4 the following issue presented in the instant petition: the prosecutor’s peremptory strike of an
5 African-American woman from the jury panel was based on race in violation of Batson v.
6 Kentucky, 467 U.S. 79 (1986);

7 Accordingly, IT IS HEREBY ORDERED that a certificate of appealability is
8 issued in the present action.

9 Dated: November 9, 2009

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12 GARLAND E. BURRELL, JR.
13 United States District Judge
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25 ¹ Except for the requirement that appealable issues be specifically identified, the standard
26 for issuance of a certificate of appealability is the same as the standard that applied to issuance of
a certificate of probable cause. Jennings, at 1010.